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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 ERIC GRIFFIN,
8
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Petitioner,

10 vs.

11 PRADO, *et al.*,

Respondents.

2:12-cv-00352-KJD-GWF

13
14 ORDER
15

16 Petitioner has submitted an application (#1) to proceed *in forma pauperis* and a
17 purported habeas petition.

18 The matter has not been properly commenced because the pauper application does
19 not include all required attachments. Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2,
20 a petitioner must attach both an inmate account statement for the past six months and a
21 properly executed financial certificate. Petitioner attached neither. He attached a release of
22 funds authorization for the postage for a mailing to federal court, which is neither an account
23 statement nor an executed financial certificate. The application therefore is incomplete.

24 The application therefore will be denied, and the present action will be dismissed
25 without prejudice to the filing of a new petition in a new action with a pauper application on
26 the proper form with all required attachments.

27 It does not appear from the papers presented that a dismissal without prejudice will
28 materially affect a later analysis of either the timeliness issue or other procedural issues with
regard to a promptly filed new action. The only purported “judgment of conviction” referenced
in the federal petition is a January 4, 2012, denial of relief by the Supreme Court of Nevada

1 in No. 58455 in that court. Review of the online docket records of the state supreme court
2 reflects that on December 7, 2011, in that matter, the state supreme court affirmed the
3 dismissal of petitioner's "affidavit of truth" in the state district court. The state supreme court
4 concluded, *inter alia*: (a) that the state district court properly construed the state filing as a
5 request for habeas relief under state procedure; and (b) that the district court properly
6 concluded that it did not have power to consider the petition because petitioner failed to
7 establish that he was in custody of the State of Nevada given that he was a federal pretrial
8 detainee. The remittitur issued on January 4, 2012. It thus does not appear that dismissal
9 of the present matter without prejudice will be tantamount to a dismissal with prejudice
10 because of the application of the federal limitation period or other defenses.

11 Nothing herein precludes the Court from applying the fee payment provisions of the
12 Prison Litigation Reform Act (PLRA) to any purported habeas petition filed by petitioner, as
13 it did in No. 2:11-cv-01246-KJD-CWH. Petitioner is a frequent frivolous filer in this district,
14 and he may not circumvent the provisions of the PLRA by recasting a civil rights action
15 instead as a habeas petition.

16 IT THEREFORE IS ORDERED that the application (#1) to proceed *in forma pauperis*
17 is DENIED and that this action shall be DISMISSED without prejudice to the filing of a new
18 pleading in a new action with a properly completed pauper application.

19 IT FURTHER IS ORDERED that a certificate of appealability is DENIED, as jurists of
20 reason would not find the Court's action dismissing the improperly commenced action without
21 prejudice to be debatable or wrong.

22 The Clerk of Court shall enter final judgment accordingly in favor of respondents and
23 against petitioner, dismissing this action without prejudice.

24 DATED: March 5, 2012



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27 KENT J. DAWSON
28 United States District Judge